abate with the death of the wrongdoer. *Clark* v. *Goodwin*, 170 Cal. 527, 150 Pac. 357; *Bates* v. *Sylvester*, 205 Mo. 493, 104 S. W. 73. That this rule of the common law reaches an undesirable result is obvious, and it has been generally corrected by statute. It is therefore interesting to note that in as important a jurisdiction as New York the defect in the common law has not yet been remedied by proper legislation.

ADMISSIONS — BY CONDUCT — SILENCE WHEN ACCUSED OF CRIME WHILE UNDER ARREST — ADMISSIBILITY AS SUPPORTING EVIDENCE. — The defendant was convicted of robbery on the testimony of an eleven-year-old boy and proof that while under arrest he had been directly accused of the crime and had said nothing. The only other evidence was independent proof of the robbery. By statute, the boy's testimony could not convict if unsupported by other evidence. *Held*, that proof of the defendant's silence under the circumstances was supporting evidence. *People* v. *Cascia*, 181 N. Y. Supp. 855.

For a discussion of this case see NOTES, p. 205, *supra*.

BANKRUPTCY — BANKRUPTCY ACT OF 1898 AND AMENDMENTS — §§ 38 (4), 70 E, AND GEN. ORD. XII. — Herbert Weidhorn, having been adjudged bankrupt, his case was referred to a referee. The trustee in bankruptcy thereafter filed with the referee a bill in equity, seeking to set aside alleged fraudulent transfers of chattels by the bankrupt to Leo Weidhorn, the present petitioner. The referee took jurisdiction and gave a decree on the merits in favor of the trustee. *Held*, that the referee had no jurisdiction. *Weidhorn* v. *Levy*, U. S. Sup. Ct., Oct. Term, 1919, No. 203.

A referee acquires only so much of the District Court's bankruptcy jurisdiction as the order of reference carries. See GENERAL ORDER XII (1), BANKRUPTCY ACT OF 1898, 5 U. S. S. A. 421. Upon unlimited reference, referees have assumed jurisdiction over proceedings in equity originally instituted before them. *In re Murphy*, 3 Am. B. R. 499; *Matter of O'Brien*, 21 Am. B. R. 11. But courts and text-books commonly deny such jurisdiction. *In re Walsh Bros.*, 163 Fed. 352; *In re Overholzer*, 23 Am. B. R. 10; see REMINGTON, BANKRUPTCY, 2 ed., § 545. And a court has only affirmed a referee's decree in such proceedings, the parties not having disputed the jurisdiction, "with great doubt." *In re Steuer*, 104 Fed. 976. The Bankruptcy Act is not uniformly construed. Under GENERAL ORDER XII (1), "all the proceedings," except those reserved to the judge, "shall be had before the referee." The District Court holds a trustee's suit against a transferee not included in these proceedings. *In re Weidhorn*, 243 Fed. 756. The Circuit Court infers inclusion from no specific exclusion in GENERAL ORDER XII (3) and § 38 (4); and, reading "any court of bankruptcy," in which a trustee is authorized by § 70 *e* to sue a transferee, in the doubtful light of § 1 (7) — "court of bankruptcy . . . may include the referee" — concludes the referee has jurisdiction. *In re Weidhorn*, 253 Fed. 28. This conclusion inevitably produces the anomaly of an appointed referee, acting not as a master with rather full powers, but as an original court. Surely it is more expedient to accelerate justice by creating more judges than by forming new tribunals.

BANKRUPTCY — DISCHARGE — EFFECT OF FALSE STATEMENTS MADE BY BANKRUPT IN ORDER TO OBTAIN BANK LICENSE. — The bankrupt a few weeks before bankruptcy secured a license to continue business as a banker by a materially false statement in writing to the State Comptroller. The bankrupt thereafter in the course of his business received deposits from his customers. The 1903 amendment of the Bankruptcy Act provides that the bankrupt shall be discharged unless he has "obtained property on credit from any person upon a materially false statement in writing made to such person for the

purpose of obtaining such property on credit." (32 STAT. AT L. 797, 1909 COMP. STAT. SUPP. 1310.) The lower court granted an order refusing to discharge the bankrupt. *Held*, that the order be reversed. *Matter of Oliner*, 262 Fed. 734 (C. C. A.).

The license to continue banking operations was not obtained "on credit" within the meaning of the act. See *In re Tanner*, 192 Fed. 572. Nor does the act apply unless the false statements are made to the persons from whom the property is obtained. *Matter of Napier*, 23 A. B. R. 560; *In re Foster*, 186 Fed. 254. And the same result has been reached under the more liberal language of the 1910 amendment of the Bankruptcy Act. *In re Zoffer*, 211 Fed. 936. See 36 STAT. AT L. 839, 1918 COMP. STAT. § 9598. This last case held that a false statement made by a debtor to a mercantile agency merely to obtain a credit rating and unrequested by the creditor will not bar the bankrupt's discharge. And the creditor who acts on the strength of the credit rating would be more directly relying on the false statement of the bankrupt than would the depositor in the principal case, who may never have known of the bank license. Cases reaching an opposite result, where the bankrupt makes the false statement to the mercantile agency, intending that the creditor shall act thereon, are to be explained on the ground that the mercantile agency is really an agent either of the creditor or of the bankrupt. See *In re Pincus*, 147 Fed. 621; *In re Cloutier Bros.*, 228 Fed. 569. See, also, *In re Dresser*, 146 Fed. 383. But the State Comptroller was obviously an agent of neither party. Whether or not the result of the principal case is on principle altogether desirable, it is submitted that it is right as a matter of statutory construction.

CARRIERS — PASSENGERS — DUTY TO PASSENGER TAKEN SICK *EN ROUTE*. — Deceased boarded the defendant's open trolley car sober and apparently in good health. Soon thereafter he became sick and eventually unconscious. The conductor, thinking deceased drunk, with the advice of a superior official of the company, permitted deceased to remain on the trolley, during its trips, for five hours. Deceased died the next day of cerebral hemorrhage. His administratrix now sues the trolley company for negligence. The trial court instructed that if the conductor honestly believed that deceased was drunk, and, acting on that belief, used ordinary prudence under the circumstances, the defendant should not be liable. *Held*, that this instruction was erroneous. *Middleton* v. *Third Ave. Ry. Co.*, 192 App. Div. 172, 182 N. Y. Supp. 598.

It has been said the carrier's relation to its passengers is founded on mere courtesy. See *New Orleans, Jackson, & Great Northern Ry. Co.* v. *Statham*, 42 Miss. 607, 614. This view is unsustainable. See 2 HUTCHINSON, CARRIERS, 3 ed. § 992. A carrier has a genuine duty to give passengers taken sick en route such reasonable care as its functioning as carrier permits. *McCann* v. *Newark & S. O. Ry. Co.*, 58 N. J. L. 642, 34 Atl. 1052; *Wells* v. *N. Y. Central & Hudson River R. R. Co.*, 49 N. Y. Supp. 510, 25 App. Div. 365. If it has undertaken an affirmative act with regard to the sick passenger, it has clearly a duty of care. *Paddock* v. *Atchison, T. & S. F. R. R. Co.*, 37 Fed. 841; *St. Louis, I. M. & S. Ry. Co.* v. *Woodruff*, 89 Ark. 9, 115 S. W. 953. Beyond this, some abnormal condition of a passenger having come to the carrier's notice, it has an affirmative duty to act with due care under the circumstances as regards this condition. *Middleton* v. *Whitridge*, 213 N. Y. 499, 108 N. E. 192. Liability cannot attach unless the carrier is actually aware of this condition. *Hollingsworth* v. *Southern Ry.*, 72 S. C. 114, 51 S. E. 560. Whether due care is then employed is not a question of the conductor's "honest belief" (as the trial court instructed). Nor of holding "a street railway employee responsible for a correct medical diagnosis." *Middleton* v. *Whitridge*, 156 App. Div. 154, 141 N. Y. Supp. 104. As the principal case declares, it is a question of fact for the jury.